

UMRA Section 204 FACA Exemption

The Federal Advisory Committee Act (FACA) applies to any committee or other group established or utilized by the President or a federal agency to obtain collective advice or recommendations and which does not consist solely of full-time federal employees. Congress enacted FACA in 1972 to reduce the mushrooming cost of unnecessary blue ribbon commissions, advisory panels, and honorary boards set up by the government to advise the President and federal agencies. The statute seeks to eliminate committees that have outgrown their usefulness and impose uniform procedures on those that are indispensable. These procedures include developing and filing a detailed charter, providing timely notice of meetings, holding meetings open to the public, making documents available to the public, and ensuring that the group is fairly balanced in points of view represented.

Section 204 of Title II of the Unfunded Mandates Reform Act (codified at 2 U.S.C. ' 1534(b)) specifically exempts certain intergovernmental meetings from FACA if they meet the following criteria.

- 1) Meetings are held exclusively between federal officials and elected officers of state, local, and Tribal governments (or their authorized, designated employees) acting in their official capacities; **and**
- 2) The meetings are solely for the purpose of exchanging views, information, or advice relating to the management or implementation of federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

While meetings with states, tribes and local officials are often exempt from FACA based on this analysis, there are a number of considerations to keep in mind. One of these considerations relates to state associations (such as ECOS). There are sharp distinctions between state officials and staff members of state associations. States sometimes are co-managers with EPA, sharing responsibilities under certain environmental statutes; state associations, however, are not co-managers with EPA. Similarly, state employees who attend EPA meetings as part of their official duties are assumed to be authorized and designated to act on behalf of the elected state official; employees of a state association generally cannot be viewed as authorized, designated employees of a state and do not have the authority to act on behalf of the elected state officials. It should be noted that state officials participating in EPA meetings should represent their respective state agencies and not state associations to which they also belong.

OMB Guidance Memorandum (September 21, 1995)

In regard to the UMRA exemption (section 204):

A This exemption applies to all Federal agencies subject to FACA, and it is not limited to the intergovernmental consultations required by [UMRA] but instead applies to the entire range of intergovernmental responsibilities or administration. In accordance with legislative intent, the exemption should be read broadly to facilitate intergovernmental communication on responsibilities or administration.

This exemption applies to meeting between Federal officials and employees and State, local or tribal governments, acting through their elected officers, officials, employees . . . at which A views, information, or advice@ are exchanged concerning the implementation of intergovernmental responsibilities or administration, including those that arise explicitly or implicitly under statute, regulation or Executive Order.@